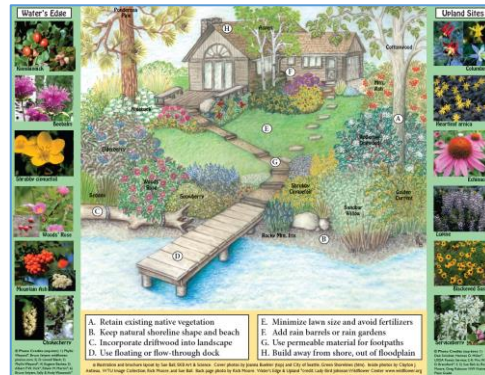


Lake County, MT

Lakeshore Protection Regulations

Adopted July 2001, Amended Res. 14-20,
Amended Res. 21-19(a) effective 9-1-2021
Amended Res. 21-28(a) effective 1-1-2022



Section 1

General Provisions

1-1 **Title**

These regulations shall be known and referred to as the “Lake County Lakeshore Protection Regulations” (LPR).

1 -2 **Authority**

These regulations are adopted under the authority of the State of Montana, 75-7-207, M.C.A., which requires local governing bodies to adopt regulations regarding the issuance or denial of permits for work in lakes, including land which is within twenty horizontal feet (20’) of the mean annual high-water elevation.

1-3 **Purpose**

(A) The purpose of these regulations is to:

- (1) conserve and protect natural lakes because of the important role they play in biological processes that contribute to a healthy natural environment, and their high scenic and resource values,
- (2) conserve and protect the value of lakeshore property,
- (3) conserve and protect the value of these lakes to the state’s residents and visitors who use and enjoy them, and
- (4) Protect the sensitive nature and pristine character of Lake County’s lakes and recognize that the ecosystems of these lakes are inseparably intertwined with the adjacent riparian corridor and upland areas.

(B) The people of Lake County recognize the value and importance of a clean and healthy environment. The natural environment in its various forms is a vital part of life in the county: it creates the scenic landscape and the natural beauty of the area; it is part of the lifestyle of the people living here; and it is part of the reason many persons choose to live here. The natural environment cannot be re-created--it can only be protected from detrimental land use. To this end, it shall be the policy of Lake County to require future growth and development to be environmentally sound and comply with the following objectives:

- (1) minimize alterations of topography, soils and vegetation so that accelerated erosion and land slippage around bodies of water is prevented,
- (2) prevent accelerated nutrient enrichment due to human activities that can cause increased eutrophication rates in Lake County’s water bodies,
- (3) maintain and preserve high quality of ground water resources,
- (4) preserve the ecological value of wetlands,
- (5) maintain, preserve, and enhance desirable natural, physical, biological, and chemical water quality aspects and aesthetic characteristics of our lakes and lakeshores, rivers, and streams,
- (6) retain and protect natural surface water drainage patterns and flow characteristic
- (7) protect natural aquatic plant and animal communities,
- (8) preserve fish spawning areas, waterfowl nesting and rearing areas, and rare and endangered plant and animal species and their necessary habitat,
- (9) quickly restore to a more natural condition any land area disturbed due to removal of vegetation, grading, or erosion,

- (10) preserve and enhance the aesthetic qualities of the landscape and its environs,
- (11) preserve the scenic qualities of views from public roads and waters,
- (12) protect public health, welfare, and safety, and
- (13) preserve and protect historic navigation opportunities on and around the lake recognized by treaty, statute, and the history of our area.

1-4 Jurisdiction

- (A) These regulations govern any work which will alter the character of any lake, lakebed, or lakeshore, having a water surface area of at least one hundred sixty (160) acres within the boundaries of Lake County, Montana, excluding the portions of Flathead Lake which lie within the jurisdictional area of the City of Polson, Montana and the waters below the elevation of 2893.2 feet (Somers Datum) of Flathead Lake within the Flathead Indian Reservation of the Confederated Salish and Kootenai Tribes.
- (B) The lakes within Lake County which are governed by these regulations include Flathead Lake, Lake Mary Ronan, and Swan Lake.
- (C) These regulations supplement all other regulations required by other governmental units or regulatory agencies having jurisdictional responsibilities over a lake, lakebed, lakeshore, or wetland. A permit issued hereunder does not authorize any work in lieu of any other required state, tribal, or federal permit.

1-5 Severability

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

1-6 Interpretation

Where any provision of these regulations is more or less stringent than other applicable regulations, the more stringent regulation, restriction, or requirement shall govern.

1-7 Amendments

- (A) These regulations shall be reviewed by the Lake County Planning Board as needed or when amendments are proposed by Lake County or the Planning Board. Additionally, amendments may be proposed to the County Commissioners and/or the Planning Department by citizens of the county. Prior to adopting any proposed amendments, the governing body shall hold a public hearing thereon. The governing body shall give notice of the time and place of the public hearing by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing.
- (B) Following the public hearing, the governing body may adopt proposed amendments and thereby affect a change in these regulations. The county may publish adopted changes in a form which is convenient for use.

Section 2

Definitions

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural; and the plural, the singular. The word “shall” is always mandatory, and the word “may” is discretionary.

- 2-1 Applicant
The landowner or his/her authorized agent who submits an application to the county for a permit.

- 2-2 Boathouse
A structure which provides housing and shelter for boats and has more than ten percent (10%) of any side or end wall area enclosed.

- 2-3 Boat Rail System
A facility consisting of tracks extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

- 2-4 Boat Ramp
A facility consisting of a pad extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

- 2-5 Boat Shelter
A structure which provides shelter for boats and has less than ten percent (10%) of any side or end wall area enclosed.

- 2-6 Breakwater
A facility, other than a dock, which protects a shore area from wave action.

- 2-7 Conditions of Approval
Standards assigned or applied to an “Application for Lakeshore Construction Permit”.

- 2-8 Dock or Pier
A structure which extends into, over, or across the water to provide for boat moorage, access to a moorage area, swimming facilities, or other water related activities.

- 2-9 Dredging
The process of excavating material from the lake bottom and thereby lowering the elevation of a portion of the lake bottom. The term “dredging” shall include the process of extending the lake area landward by excavating material from the lakeshore protection zone and thereby lowering the elevation of a portion of the lakeshore protection zone.

- 2-10 Expansion
Addition to an existing structure; including the alteration of the site shape footprint or aerial extension of a structure.

- 2-11 Filling
The process of discharging material onto a lake bottom and thereby raising the elevation

of a portion of the lake bottom. This process may include the elimination of an aquatic environment or a wetland environment by extending the dry land area into such aquatic or wetland area. The term "filling" shall include the process of discharging material onto the lakeshore protection zone and thereby raising the elevation of a portion of the lakeshore protection zone.

2-12 Free Water Area

The open area beneath a dock, wharf, pier, breakwater, or other structure which is totally free of any obstruction to water transfer under the structure.

2-13 Governing Body

The Board of County Commissioners for Lake County, Montana.

2-14 Groin

Any structure designed to arrest water, sand, or gravel movement along the lakeshore or along a dock, breakwater, retaining wall, or similar structure.

2-15 Jetties

Structures, usually in pairs, which extend from the lakeshore into the lake at the mouth of rivers or at the entrance to lagoons which are designed to confine the flow of water to a narrow zone.

2-16 Lagoon

An artificial boat harbor created by excavating the lakebed or lakeshore, removing earth material, and thereby extending an aquatic environment into a dry land area.

2-17 Lake

A body of standing water and the area within its lakeshore, including adjacent wetlands, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least one hundred sixty (160) acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. The lakes within the county which are governed by these regulations are Flathead Lake, Swan Lake, and Lake Mary Ronan.

2-18 Lakebed

The land area covered by water when the lake is at mean annual high-water elevation.

2-19 Lakeshore

The perimeter of a lake and adjacent wetlands when the lake is at the mean annual high-water elevation, including all land area within twenty horizontal feet (20') of the perimeter of the lake and adjacent wetlands. The lakeshore measurement is taken horizontally from the perimeter of the lake and adjacent wetlands, and it extends inland from the body of water.

2-20 Lakeshore Protection Zone

The lake, lakebed, and lakeshore. This area shall include the land area surrounding a lake

and adjacent wetlands that is within twenty horizontal feet (20') of the perimeter of the lake and adjacent wetlands when the lake is at the mean annual high-water elevation.

2-21 Living Quarters

All permanent, semi-permanent, and temporary buildings, guest quarters, cabins, apartments, mobile homes, campers, trailers, motor homes, attached decks, or similar facilities, including appurtenant structures, which provide sleeping and/or eating facilities.

2-22 Maintenance

Routine upkeep performed on an existing structure. Work shall not impact the lakeshore protection zone, nor shall the size, shape, character, or nature of the structure be altered.

2-23 Mean Annual High-Water Elevation

The mean average of the highest elevation of a lake in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. The highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high-water elevation.

2-24 New Construction

Structures for which construction, substantial improvement, or alteration commences on or after the effective date of these regulations.

2-25 Nonconforming Use

A use or activity which was lawful prior to the adoption, revision, or amendment of these regulations but which fails by reason of such adoption, revision, or amendment, to conform to the present requirements of the regulations.

2-26 Permit

A document issued by the governing body signifying that project plans together with any specified "Conditions of Approval" are in compliance with the "Policy Criteria for Issuance of a Permit" (Section 5-1).

2-27 Person

Any individual, firm, corporation, institution, or entity, including the State of Montana and its agents, agencies and political subdivisions.

2-28 Planning Board

- (A) The Lake County Planning Board within its jurisdictional area.
- (B) The Polson City-County Planning Board within its jurisdictional area.

2-29 Planning Staff

The planners in the employ of Lake County, Montana and associated with the Lake County Planning Board.

2-30 Reconstruction/Remodel

Renovation of an existing facility resulting in a change that is equal to or less than fifty percent (50%) of the structure's original value.

2-31 Repair

To restore an existing facility to a sound condition by replacing component parts of the

facility.

2-32 Retaining Wall

Any structure built essentially parallel and contiguous to the mean annual high-water elevation of a lake which is designed to protect the land mass inland from the structure from erosion or wave action.

2-33 Riparian Boundary

A projection of the side property lines from their point of intersection with the perimeter of the lake (at its mean annual high-water elevation) lakeward at right angles (perpendicular) to the mean annual high-water elevation. Where a structure has been built into the lake, and the structure has caused the build-up of an artificial lakeshore, the artificial lakeshore cannot be utilized to establish the riparian boundary.

2-34 Shore Station

A metal or wood frame carriage designed to hoist boats from the water and to store boats over the water.

2-35 Structure

Any addition to or modification of the lakeshore protection zone which affects the current/cross-sectional area of a lake, lakebed, or lakeshore.

2-36 Variance

Exemption to the regulations granted by the governing body in a situation where strict enforcement causes undue hardship and no reasonable alternatives exist.

2-37 Variance - Major

A variance granted for exemption to violations of “Policy Criteria for Issuance of a Permit” outlined in Section 5-1.

2-38 Variance - Minor

A variance granted for a slight deviation from the “General Construction Requirements” outlined in Section 5-2.

2-39 Wetlands

Water-land interface areas which are inundated or saturated by surface and/or ground waters at a frequency and duration of time periods sufficient to establish and, under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include but are not limited to swamps, marshes, bogs and similar areas. Wetland areas may be separated from the main body of water by human made barriers or natural berms. The water elevation in a wetland area is related to the elevation of the lake water.

2-40 Work

Any activities which will alter, impact or modify the current, course or cross-sectional area of a lake, lakebed or lakeshore.

Section 3

General Procedures

3-1 General Requirements

- (A) No person may proceed with any construction work, landscape modification, or maintenance which alters or disturbs the lakeshore protection zone, except as outlined in Section 3-3 of these regulations until she/he has obtained and has physical possession of a valid “Lakeshore Construction Permit” issued by the governing body.
- (B) A person who performs or authorizes work or landscape modification which alters or disturbs the lakeshore protection zone, as outlined in Section 3-4 of these regulations after May 1, 1975 without possession of a valid permit for that work shall, if required by the governing body or the district court, restore the lakeshore protection zone to its original condition or remedy the same as determined by the county and/or courts as detailed in Section 3-5.
- (C) The person who does or authorizes work in the lakeshore protection zone is responsible for assuring that a valid permit has been obtained from the governing body.
- (D) The person who does or authorizes work in the lakeshore protection zone shall acknowledge that the proposed construction is limited to all “Conditions of Approval” attached to the permit.
- (E) Work or development approved under these regulations shall not create any vested property right in the permitted project, other than in the physical structure, if any.

3-2 Permission to Enter

- (A) The governing body, the planning board, or the planning staff may conduct investigations, examinations and site evaluations as they deem necessary in order to verify information supplied as a requirement of these regulations, to evaluate a proposed project for compliance with these regulations to observe and monitor construction, and/or to evaluate completed projects for compliance with approved plans, these regulations, and any specific “Conditions of Approval”.
- (B) The filing of an “Application for a Lakeshore Construction Permit” with the governing body by a landowner or his/her authorized agent shall constitute a grant by the landowner to the governing body, planning board, and planning staff permission to trespass and enter upon the subject property for review and evaluation purposes under these regulations.

3-3 Exemptions from Permit Requirements

The following types of work are exempted from the permit requirements of these regulations:

- (A) Emergency work is exempt from the standard permit requirements of these regulations providing that all of the following conditions are met:
 - (1) the governing body receives notification as to the nature of the emergency,

a description of the work to be done and the location of the project site. If the work date falls on a normal working day (Monday through Friday, excluding holidays) notification must be accomplished prior to beginning work; if the work date falls on a non-working day (Saturday, Sunday, and holidays) notification shall be accomplished the next working day,

- (2) there is a genuine and true emergency condition where there is an eminent threat to property or improvements,
- (3) the work done is only what is necessary to mitigate the immediate threat to property or improvements, and
- (4) the conditions which constitute the eminent threat are caused by extenuating circumstance which could not be readily anticipated and which are not recurrent on an annual basis.

If work done under this emergency provision goes beyond what is minimally necessary to mitigate the danger to property or improvements, or if work is done where no emergency condition existed, such work shall be considered a violation of these regulations, and appropriate action shall be commenced by the county pursuant to Section 3-5 of these regulations.

(B) Maintenance on properties and existing structures which will have an insignificant or minimal environmental effect upon the lake, lakebed or lakeshore. Typically, only hand tools would be involved.

- (1) In this context maintenance on existing structures includes, routine or seasonal work or upkeep involving tightening, adjusting, or minor replacement of boards, roofing materials, or windows, etc.;
- (2) In this context maintenance on properties includes, cleanup of debris such as branches and leaves, restacking fallen rock, installing new native plants (e.g. shrubs and grasses), maintenance of existing vegetation including trimming that does not imperil the health of trees and plants, and maintaining pathways, etc.;
- (3) Work in this section not requiring a permit shall not exceed a total dollar amount of \$200 (materials only) within one calendar year; and
- (4) Any dredging, filling or excavation is not considered maintenance.

If work done under this provision goes beyond what is necessary to perform the minimal tasks as described herein to property or improvements, such work shall be considered a violation of these regulations, and appropriate action shall be commenced by the county pursuant to Section 3-5 of these regulations.

3-4 Work for Which a Permit is Required

(A) Any work, including maintenance, which will temporarily or permanently alter, diminish, or increase the course, current or cross-sectional area of the lakeshore protection zone must first be secured by a permit from the governing body before any work is commenced, except as allowed in Section 3-3.

(B) Without limitation, the following activities, when conducted waterward of the perimeter of a lake when it is at its mean annual high-water elevation, are examples of work for which a permit is required, except as allowed in Section 3-3:

- (1) construction of channels and ditches,
 - (2) dredging,
 - (3) filling,
 - (4) construction of retaining walls and breakwaters,
 - (5) construction of wharves, docks, and piers,
 - (6) construction of boathouses, boat shelters, buildings, or other impervious surface areas,
 - (7) installation of water lines, sewer lines, or other utility lines or facilities,
 - (8) installation of shore stations, boat rail systems, boat ramps, buoys, floating docks, or piling,
 - (9) removal of vegetation,
 - (10) maintenance and reconstruction of existing facilities,
 - (11) temporarily stockpiling brush, trees, vegetation, or construction debris or materials, and
 - (12) installation of fuel delivery systems (see Section 5-3).
- (C) Without limitation, the following activities, when conducted within the lakeshore protection zone, are examples of work for which a permit is required, except as allowed in Section 3-3:
- (1) construction of channels or ditches,
 - (2) excavation or dredging,
 - (3) filling,
 - (4) construction of lagoons,
 - (5) construction of living quarters, buildings, boathouses, boat shelters, or other impervious surface areas,
 - (6) construction of boat service facilities, including the installation of fuel pumps,
 - (7) construction of aerial structures, including extensions into the air space,
 - (8) installation of waterlines, sewer lines, drain lines, lighting, or other utility lines or facilities,
 - (9) clearing of vegetation,
 - (10) maintenance and reconstruction of existing facilities, and
 - (11) temporarily stockpiling brush, trees, vegetation, or construction debris or materials.

3-5 Violations

When a person violates a rule or permit issued under the authority of these regulations, or a person knowingly violates a provision of these regulations, or a person knowingly does or authorizes work on or alters a lake, lakebed, and lakeshore without first obtaining a permit for such work, or does work in excess of a permit in violation of these regulations, the following may take place:

- A. A notice of violation shall be issued in writing to the person responsible for such violations, as well as the property owner.
- (1) The notice of violations shall indicate the nature of the violation and order the action necessary to correct it or remedy the same.
 - (2) The notice shall also order discontinuance of illegal building activities or structures or of illegal additions, alterations, structural changes, or uses.
 - (3) The county may assess an administrative penalty to be paid by the

landowner and/or the party responsible for violating the regulations. The penalty fee may be up to \$500 per violation as determined by the county. The administrative penalty may be assessed for each separate and distinct violation and does not replace the landowner's responsibility to mitigate or correct the violation.

- (4) The person in violation shall be given a specified amount of time to correct the violation as indicated in the notice of violation sent by the county.
- (5) If the party in violation does not comply with the notice of violation within specified amount of time, the violation shall be forwarded to the Lake County Attorney's Office for enforcement.
- (6) The County Attorney may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, or use to restrain, correct, or abate such violation, to prevent occupancy or use of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. A violation of the regulations is a misdemeanor and shall be punishable by a fine not exceeding \$500.00 or imprisonment in the county jail not exceeding six (6) months or both, and costs of prosecution and restitution.

3-6 Judicial Review and Enforcement

- (A) The District Court may hear and decide any complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in the lakeshore protection zone.
- (B) The District Court may hear and decide any petition of an interested person for review of final action of the governing body on an application for a permit.

Section 4

Review Procedures

4-1 Application

- (A) Any person who proposes activity or work outlined in Section 3-4 of these regulations shall submit a completed application for a lakeshore construction permit. The application shall be submitted along with the appropriate review fees and a bid from a contractor for the proposed work (including materials). If a homeowner is doing the work themselves they shall submit a cost of materials bid from their materials resource and an approx. bid for labor. All information required shall be submitted to the Lake County Planning Department for processing.
- (B) **Review Fees**
Review fees are based on the cost of the project and determined using a sliding scale as set forth in the Lake County Planning Department fee schedule.

4-2 Lakeshore Construction Permit

- (A) The permit issued under the authority of these regulations is valid for one (1) calendar year from the date of issuance. The approval period may be extended for a period not to exceed one (1) calendar year, provided the applicant requests an extension of time from the governing body before the original permit expires and the governing body agrees to the extension of time. Only one such extension may be granted. Once the approval period lapses, the permit becomes null and void. A new application must be submitted for review and a new permit obtained before the project may proceed.
- (B) The permit issued pursuant to these regulations strictly limits construction to authorized plans on file with the governing body, to all “General Construction Requirements” of Section 5-2 and to all “Conditions of Approval” attached to the permit.
- (C) The permit issued pursuant to these regulations shall signify that the proposed project is in compliance with the “Policy Criteria for Issuance of a Permit” contained in Section 5-1 of these regulations. The issuance of a permit shall not be construed as insurance that the project is structurally sound, that the project will withstand environmental forces acting upon it, or that the project will accomplish its intended purpose.
- (D) The permit issued pursuant to these regulations shall grant authorization to begin construction of an approved project within the riparian boundaries of the applicant’s property. The issuance of a permit shall not be construed as verification that the approved project is within such riparian boundaries; it is the applicant’s responsibility to ascertain that the approved project is situated within the riparian boundaries of the subject property.
- (E) The permit issued pursuant to these regulations shall be publicly displayed within twenty feet (20’) of the project site during the construction period.

4-3 Summary of Review Procedures

- (A) The planning department staff shall review the application to determine whether or not the proposed project complies with these regulations.
- (B) Review of an application for a lakeshore construction permit and its approval, conditional approval or denial shall take place within a ninety (90) day period unless the applicant provides a written request for an extension of the review period. The time period shall commence to run the day the application is submitted for review, provided all required information and review fees have been properly submitted.
- (C) If an application is inadequate for review purposes in that all the required information or review fees have not been submitted, the planning staff shall notify the applicant of such within five (5) working days of the determination being made and the review period shall not commence until the application is suitable for review.
- (D) If the project is in conformance with the construction requirements and design standards or if the applicant agrees to design changes and necessary “Conditions of Approval” in order to bring the project into compliance with such requirements and standards, the planning staff shall so notify the governing body, and the governing body may issue a permit.
- (E) If the project is not in compliance with the construction requirements and design standards, the planning staff shall review the project to determine whether or not a variance could be granted pursuant to the requirements of these regulations.
 - (1) If the conditions for granting a minor variance pursuant to Section 4-4(A) are met, the staff shall so notify the governing body, and a permit may be issued.
 - (2) If the conditions for granting a minor variance pursuant to Section 4-4(A) may possibly not be met, the planning staff shall schedule the project for review by the planning board (see Section 4-5 for procedures) and so notify the applicant of the same.
- (F) If a proposed project requires a variance to the standards contained herein, or planning board review, the applicant shall:
 - (1) waive the 90-day review time frame for the permit application,
 - (2) pay the necessary additional fees, and
 - (3) submit a request for the variance(s).
- (G) If a lakeshore construction permit application is denied, the applicant may initiate review of the application pursuant to Section 4-4(B) of these regulations by entering into a contract with the governing body and providing assignable security of not less than five hundred dollars (\$500.00) to cover costs incurred by the county to draft the impact statement, reproduce and distribute the impact statement, hold a public hearing for which notice has been published, and draft final findings and recommendations to the governing body.

The applicant shall reimburse the county for all costs incurred in reviewing a request for a variance from the “Policy Criteria for Issuance of a Permit” (Section

5-1). The contract, the security provided and the amount of security provided shall be expressly subject to acceptance by the governing body.

4-4 Variances

If it is determined that a project is not in compliance with these regulations, the governing body may grant a variance as follows:

- (A) The governing body may grant reasonable variances (minor) from the construction requirements and design standards contained in Sections 5-2 and 5-3, as well as Section 5-4 of these regulations when the governing body determines that:
 - (1) due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship,
 - (2) that no reasonable alternatives exist which do meet the standards contained herein, and
 - (3) that granting of the variance will not be adverse to the “Policy Criteria for Issuance of a Permit” as outlined in Section 5-1 of these regulations.
- (B) The governing body may grant a variance (major) from the “Policy Criteria for Issuance of a Permit” (Section 5-1) only after preparing an environmental impact assessment, at the expense of the applicant, which conforms to the requirements of this section, and after obtaining a recommendation from the planning board and holding a public hearing, as specified in Section 4-5 and this section respectively.
 - (1) The environmental impact assessment shall contain the following information:
 - (a) description of the proposed project,
 - (b) description of the variance being considered,
 - (c) description of existing conditions,
 - (d) description of known environmental effects,
 - (e) probable environmental effects, and
 - (f) any unavoidable environmental effects, and
 - (g) alternatives to the proposed project.
 - (2) After the governing body has prepared and distributed the environmental impact assessment, a public hearing shall be held. Notice of the time and place of the public hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The applicant and all adjoining landowners shall be sent notice of the time and place of the hearing and one (1) copy of the environmental impact assessment by certified mail not less than fifteen (15) days prior to the date of the hearing.
 - (3) Following the public hearing, the governing body may grant the variance, deny the variance or continue the hearing to provide for the input of additional information. If a variance is granted, the governing body may attach “Conditions of Approval”.

Variances (major) from design standards which would be adverse to the “Policy Criteria for Issuance of a Permit” must be reviewed under the provisions of Section 4-5 of these regulations.

- (C) Variance requests require additional staff and board review. Therefore, the project is subject to supplemental fees as outlined in Section 4-1 (B). All fees shall be paid at the time of application for variance. These fees are non-refundable.

4-5 Planning Board Review Procedures

- (A) At a regular meeting of the planning board, the planning staff shall present its findings to the planning board in regards to the site investigation; the applicant may meet with the planning board in order to discuss the variance request.
- (B) After review of the planning staff's report and related discussion and inquiry, the planning board shall make a finding as to whether or not the proposed project is in compliance with the "Policy Criteria for Issuance of a Permit" (Section 5-1).
 - (1) If the planning board finds the project to be in compliance with the "Policy Criteria for Issuance of a Permit" (Section 5-1), the board may recommend to the governing body that the variance request be granted, provided that "Conditions of Approval" may be attached to the permit.
 - (2) If the planning board finds the project to be adverse to the "Policy Criteria for Issuance of a Permit" (Section 5-1), the board shall recommend to the governing body that the variance request be denied; such a recommendation shall include reasons for disapproval.
- (C) The findings of the planning board shall constitute a recommendation to the governing body. After receiving the recommendations of the planning board, the governing body shall review the variance request and the findings of the planning board in order to determine whether or not the project is in compliance with the "Policy Criteria for Issuance of a Permit" (Section 5-1).
 - (1) If the governing body determines that the project will comply with the "Policy Criteria for Issuance of a Permit" (Section 5-1), the governing body may issue a permit.
 - (2) If the governing body determines that the project can be brought into compliance with the "Policy Criteria for Issuance of a Permit" (Section 5-1) through minor changes in design or construction plans, the governing body may issue a conditional permit and list the specific "Conditions of Approval."
 - (3) If the governing body determines that the project will be adverse to the "Policy Criteria for Issuance of a Permit" (Section 5-1), the governing body shall deny the variance request and no permit shall be issued.
 - (4) The applicant may then choose to abandon the project, modify the project to comply, or appeal to the district court.

Section 5
Criteria for Issuance of a Permit

5-1 **Policy Criteria for Issuance of a Permit**

- (A) The proposed action shall not, during either its construction or its utilization:
- (1) materially diminish water quality,
 - (2) materially diminish habitat for fish or wildlife,
 - (3) interfere with navigation or other lawful recreation,
 - (4) create a public nuisance,
 - (5) create visual impact discordant with the background landscape or aesthetic values of the lakeshore, nor
 - (6) significantly alter the natural characteristics of the lakeshore.
- (B) The proposed action shall meet the following criteria in order to be in compliance with Montana's policy of non-degradation of existing high water quality as described in the water quality act, Section 75-5-303 MCA and water quality and non-degradation standards, ARM Title 16, chapter 20, subchapters 6, 7, 9, and 10:
- (1) The proposed action shall not cause, directly or indirectly, increased sedimentation in the lake during either its construction or utilization;
 - (2) The proposed action shall not cause, directly or indirectly, increased discharge or concentration of nutrients or toxic substances in the lake during either its construction or utilization;
 - (3) The proposed action shall not cause, directly or indirectly, an increase in suspended sediments for a significant period of time during either its construction or utilization.
- (C) The proposed action shall meet the following criteria in order to be in compliance with the purpose of these regulations and the policies of Section 75-7-201 MCA:
- (1) The proposed action shall not materially infringe on the scenic view from neighboring properties;
 - (2) The proposed project shall not alter water currents or transfer wave action in a way that increases lakeshore erosion.

Section 5
Criteria for Issuance of a Permit

5-2 **General Construction Requirements Affecting All Permits**

The following requirements are mandatory “Conditions of Approval” which expressly limit and affect any project for which a “Lakeshore Construction Permit” is issued. A proposed project must be in compliance with these construction requirements in order for a permit to be issued, excepting cases in which a variance may be granted under special circumstance pursuant to and in accordance with Section 3-5(B) of these regulations.

- (A) Any material which is excavated from the lakebed or lakeshore and not used as backfill shall be removed entirely from the lakeshore protection zone and deposited in such a manner and in such a location so as to prevent re-entry of the material into the lake. Alternatively, the excavated materials may be deposited behind a retaining wall which effectively prevents re-entry of the material into the lake. The finished elevation of any backfill area situated waterward of the mean annual high-water elevation or waterward of a retaining wall shall closely approximate the natural contour of the lake bottom before disturbance.
- (B) Any materials used for fill shall be free of fine materials (i.e. clays, silts, and sands) unless the material is placed behind a retaining wall which will prevent introduction of the materials into the lake. Lakebed materials such as clays, silts, sands, or gravels shall not be excavated and utilized as fill material. Large cobble and boulders lying on the lake bottom and not part of the lakebed armament may be picked from the lakebed and used for rip rap along the mean annual high-water elevation, or it may be used as fill material inside cribs or behind retaining walls, provided that such rock can be picked from the lakebed without excavating any fine lakebed materials and an armament of rock or gravel remains on the lakebed in the work area to mitigate impacts to water quality.
- (C) Any construction activity which will affect the lakeshore protection zone shall incorporate all necessary means to prevent pollution of the lake, including erosion, sedimentation, and storm runoff controls.
- (D) The total of all constructed impervious surface areas over the body of water shall not exceed eight square feet (8 ft²) per linear front foot of lakeshore.
- (E) The total of all constructed impervious surface areas over the land portion of the lakeshore protection zone shall not exceed five square feet (5 ft²) per linear front foot of lakeshore, and such impervious areas shall be designed and constructed to drain storm water runoff into the soil mantle, not the lake.
- (F) All pilings and lumber used within the Lakeshore Protection Zone shall be left untreated. Exceptions to this requirement may be made on a case by case basis subject to alternate materials complying with the Policy Criteria for Issuance of a Permit addressed in Section 5-1(A).
- (G) All construction debris (including excess backfill, cleared vegetation, concrete, old construction materials and waste materials from new construction) shall be disposed of outside the lakeshore protection zone in such a manner and in such a

location so as to prevent its re-entry into the lake. These materials will not be stockpiled within the lakeshore protection zone.

- (H) Burning of weeds, grass, shrubs, brush, trees, old construction materials, waste from new construction, or similar materials on the lakebed or lakeshore is prohibited except as provided in Section 5-3(J)(2)(a). This regulation is not intended to prohibit small “campfires”.
- (I) All decks, boat ramps, boat shelters, wharves, docks, piers, aerial structures and boat service facilities shall abide by Section 5-3 of these regulations or otherwise required by the “Conditions of Approval” attached to any permit issued. Where common lake-related facilities are to be constructed and shared by two or more property owners, setback requirements from the common property line(s) may be waived provided that all affected parties sign the application, and the application clearly specifies that the facilities are to be used in common by the parties.
- (J) Properties which lack adequate lake frontage to provide for minimum setbacks shall not be allowed improvements.
- (K) All proposed work within the lakeshore protection zone shall incorporate erosion controls and a re-vegetation plan which shall be incorporated into all project plans.
- (L) Vehicles, excavators, and other machinery shall not be placed into the waters of a lake at any time during the construction process. Operation of motorized vehicles on the lakebed shall be reviewed on a case-by-case basis. Under no circumstance shall motorized vehicles be skidded onto the lakebed.
- (M) Slopes of twenty-five percent (25%) or greater shall not be disturbed as a result of any activity in the lakeshore protection zone.
- (N) The applicant or his/her authorized agent shall notify the planning staff when an approved project is completed. The planning staff will then be able to initiate on-site evaluation of the project in order to assure that the project is compliant with approved plans, “Conditions of Approval”, and “Lake County Lakeshore Protection Regulations”.
- (O) Fertilizers, pesticides and herbicides shall not be used in the Lakeshore Protection Zone to prevent nutrients and other chemicals from entering the lake.

Section 5
Criteria for Issuance of a Permit

5-3 Design Standards

(A) Docks, Wharves, and Piers

(1) Policy

- (a) Open docks and floating docks which allow complete water transfer beneath the dock are preferred. Piling, floating, metal pipe, and concrete or crib pillar docks with large free water transfer areas do not impede the current flow of water, and therefore, do not allow for concentration of pollutants or nutrients behind the dock, creation of stagnant water conditions, significant change in plant or algal growth behind the dock, or significant change in patterns of erosion or deposition of lakebed or lakeshore materials due to alteration of current flows. Open docks have an insignificant impact on the lakeshore protection zone.
- (b) Partially open docks which provide for restricted water transfer may be allowed. Such docks partially impede the free transfer of water beneath the dock, and as such, they may cause minor adverse impacts to water quality. Partially open docks are those constructed of closely spaced piling, closely spaced planking, concrete or crib docks with reduced free water areas, or similar structures which impede free water transfer.
- (c) Docks, wharves and piers have a high potential to interfere with public navigation and public recreation. The property owner has a riparian right to lake access; the public has a right to navigation and recreation on public waters. A balance of these two rights can be reached by considering the water depth at a given location and the distance a structure extends into the public waters.

(2) Standards

- (a) Docks shall not exceed sixty feet (60') in length if there is approximately five feet (5') or more of water depth at the end of the dock when the lake is at its mean annual high-water elevation. Exceptions may be made in cases where special circumstances require additional water depth.
- (b) No dock shall exceed one hundred feet (100') in length as measured from the mean annual high-water elevation to the furthest extension of the dock into the lake.
- (c) No solid portion of a dock extending waterward from the mean annual high-water elevation shall exceed twenty feet (20') in length.
- (d) For partially open docks, the free water area shall be at least as wide as the solid portion, unless another design which provides substantial free water area is reviewed and approved.
- (e) Solid concrete, piling, plank or crib docks that essentially block the transfer of water beneath the dock are not permitted.
- (f) For existing nonconforming solid structures, culverts may be utilized to provide some water transfer through an otherwise solid

dock provided that such docks are constructed in accordance with approved plans. In general, a twenty-four-inch (24") culvert should be located at a depth of one to two feet (1-2') below the mean annual high-water elevation on ten-foot (10') centers. A thirty-six-inch (36") culvert should be set on the lakebed on ten-foot (10') centers and located halfway between the twenty-four-inch (24") culverts.

- (g) Partially open docks shall meet the following standards:

Dock Length	Standards
0-50 feet	One or more openings which incorporate at least one-half (1/2) of the total length and side wall area as free water area(s).
51-75 feet	Two or more openings which incorporate at least one-half (1/2) of the total length and side wall area as free water area(s).
76-100 feet	Three or more openings which incorporate at least one-half (1/2) of the total length and side wall area as free water area(s).

- (h) Where boat access is necessary to a dock structure, a minimum of twenty-five feet (25') shall remain open between the dock structure and the riparian boundary.
- (i) The breakwater portion of a dock shall not exceed twenty-five percent (25%) of the property's linear frontage or thirty feet (30'), whichever is less. In this context, the breakwater portion of a dock is measured as the length of the portion of the dock that is generally parallel to the shoreline, excluding the main dock stem.
- (j) Breakwater baffle boards may be placed along the sides of docks to break wave action along open stretches of dock; however, the boards shall be placed no closer than three feet (3') from the existing lake bottom or shoreline to allow for free movement of lake currents.
- (k) The maximum width of any portion (e.g. main stem, breakwater, wing, etc.) of a dock shall be limited to eight feet (8'). Additional width may be approved at the discretion of Lake County for the breakwater portion of a floating dock when needed for public health and safety reasons (e.g. stability) without a variance.
- (3) Special recommendations apply to Swan Lake and Lake Mary Ronan. Property owners on these two lakes are not allowed to construct piling or crib docks due to winter ice conditions. Floating docks are required and shall meet the standards listed here:
- (a) Use of Styrofoam or similar floatation devices is allowed, but it must be encased with rubber coating or covered with wire mesh with holes no larger than 1/8 inch,
- (b) Floating docks shall be removed from the water by December 1 and

anchored securely to avoid ice damage and improve the appearance of the lakeshore. Wood skids shall be incorporated into the bottom of the dock to protect the wood bottom during annual installation and removal.

- (c) All floating docks shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods are limited to cable, galvanized chain, nylon rope, or polypropylene rope attached to a suitable clean weight. Suitable weight materials include solid and clean concrete, rock, or steel blocks. A temporary pipe and post system that allows the dock sections to slide up and down is also acceptable.
- (d) Docks approved under Section 5-3(A)(2) which are located on Lake Mary Ronan or Swan Lake are permitted to be relocated lakeward of the mean annual high-water mark elevation according to current lake levels in accordance with these regulations and any approvals granted by Lake County.

(B) Boathouses/Structures

(1) Policy

- (a) Boathouses are essentially land-based structures. If built waterward of the mean annual high-water elevation they amount to extensions of human activities into an aquatic environment. Boathouses built waterward of the mean annual high-water elevation have a high potential to create a visual impact which is discordant with the background landscape, detract from the aesthetic values of the lakeshore, block scenic views from neighboring properties, significantly alter the natural characteristics of the lakeshore, and diminish water quality.
- (b) Boathouses and other structures shall be located landward of the mean annual high-water elevation.

(2) Standards

- (a) Preferably, boathouses shall be located landward approximately twenty feet (20') from the mean annual high-water elevation; however, a minimum distance of ten feet (10') is required.
- (b) The lakeshore protection zone and lake bottom shall not be excavated or dredged in order to provide channels and suitable water depth for boating access into the structure.
- (c) Boathouses shall be designed and constructed with materials which are non-reflective and of natural colors which blend with the background landscape.
- (d) Boathouses which are greater than twenty feet (20') in length or width shall be located outside the lakeshore protection zone.
- (e) Any structure which accommodates any living quarters or other non-riparian use activity in conjunction with housing boats shall be located outside the lakeshore protection zone.
- (f) Boathouses shall be located no closer than fifteen feet (15') from a side property line.
- (g) Boathouses shall not exceed twelve feet (12') in average height.

(C) Retaining Walls

(1) Policy

- (a) Retaining walls significantly alter lakeshore characteristics. They create a totally unnatural environment which causes alteration of wave actions, beach dynamics and erosion patterns. Retaining walls should be constructed only to stop lakeshore erosion.
- (b) Retaining walls which do not follow the natural contour of a lake have a high probability of contributing to erosion of neighboring properties and adversely impacting the lake and lakebed.
- (c) Log retaining walls, including logs adequately pinned to a concrete foundation, are preferred to concrete retaining walls.
- (d) Concrete is the least desirable construction material in relation to wood and native stone. Concrete should only be used in locations where no other reasonable alternatives exist.

(2) Standards

- (a) Retaining walls shall not be permitted in areas where active erosion processes are not evident.
- (b) The preferred location of retaining walls is at or above the mean annual high-water elevation whenever possible. Retaining walls shall conform as close as possible to the contour of the lake.
- (c) If an old retaining wall is to be replaced, the original shall be removed from the lakeshore protection zone and the replacement wall shall be constructed in essentially the same location as the old wall, whenever possible.
- (d) Where active erosion has been allowed to occur, new retaining walls shall be constructed no more than three feet (3') waterward of the existing mean annual high-water elevation.
- (e) Retaining walls designed to reclaim property or to extend the land area into the lake shall not be permitted.
- (f) Groins shall be constructed to prevent erosion of neighboring properties where necessary or advisable.
- (g) Fill behind retaining walls shall not extend further than four inches (4") from the top of the retaining wall.
- (h) Retaining walls shall incorporate a filter cloth to prevent the leaching of fine materials (sands, silts, and clays) into the lake.
- (i) Rip rap shall be placed at the toe of the retaining wall to prevent erosion of the footings and degradation of the structural integrity of the wall.
- (j) Fill behind the retaining wall shall be re-vegetated immediately after the wall is in place.
- (k) Concrete retaining walls shall be faced with wood or some other acceptable medium to break up the outline of the wall from the lake and surrounding properties.
- (l) Weep holes shall be incorporated to drain water and to prevent damage from freezing or hydraulic pressure.

(D) Boat Shelters and Shore Stations

(1) Policy

- (a) Boat shelters and shore stations generally have an insignificant impact on the lakeshore protection zone.
- (b) Boat shelters and shore stations can detract from or block scenic views from neighboring properties.

(2) Standards

- (a) Boat shelters and shore stations shall be located no further waterward of the mean annual high-water elevation than is necessary to provide adequate dockage when the lake is at full pool. Boat shelters and shore stations shall not be located further than sixty feet (60') from the mean annual high-water elevation of the lake.
- (b) Boat shelters and shore stations shall be located no closer than fifteen feet (15') to a riparian boundary line. However, a greater setback distance may be required if, in the opinion of the governing body, the structure would likely infringe on the scenic view from the adjoining property.
- (c) The highest point on a boat shelter or shore station shall not exceed twelve feet (12') in height above the mean annual high-water elevation of the lake. Maximum height of a boat shelter may be extended to fourteen feet (14') if additional height is required to accommodate the landowner's boat and they provide supportive comments from adjacent lakefront properties.
- (d) Boat shelters shall be designed and constructed with materials which are non-reflective and of natural colors which blend with the background landscape. Boat shelters shall not exceed forty percent (40%) of allowed constructed impervious surface area or six hundred square feet (600 ft²), whichever is less.

(E) Boat Ramps and Boat Rail Systems

(1) Policy

- (a) Boat ramps and boat rail systems generally have an insignificant impact on the lakeshore protection zone.
- (b) Facilities designed for removal of boats from the lake are preferred over docks for protection of boats.

(2) Standards

- (a) The concrete pad shall be at least four inches (4") thick and reinforced with six-inch by six-inch 10/10 wire mesh or rebar; a minimum of six-inch (6") overlap is required if wire mesh is used.
- (b) Footings shall be at least eight inches (8") deep and reinforced with at least two (2) #4 (1/2") rebar which are continuous through the footing.
- (c) Maximum grade shall be fifteen percent (15%) and no natural slope in excess of twenty five (25%) grade shall be disturbed by construction of a boat ramp.
- (d) Boat ramps shall be essentially the same elevation as the lakebed elevation.
- (e) Launching rails shall be suitably anchored to the lake bottom.

- (f) Launching rails shall not extend further than (50') lakeward of the mean annual high-water elevation.
- (g) Boat ramps and rail systems shall be located no closer than fifteen (15') to a side boundary line.

(F) Jetties and Groins

(1) Policy

- (a) Jetties, and groins have a high impact on lakeshore areas. These structures often alter current flows, alter erosion and sedimentation patterns, create stagnant water areas, and potentially interfere with navigation or recreational use of public waters, therefore they shall not be allowed.

(G) Dredge and Fill

(1) Policy

- (a) Dredging of a lake bottom can have serious effects due to suspension of fine materials, exposure of stable lakebed sediments to unstable conditions, removal of lakebed armament, and creation of steep beach areas.
- (b) Filling of a portion of a lake has serious effects due to complete destruction of an aquatic environment, loss of habitat for fish and wildlife, loss of water storage capacity, creation of an unnatural lakeshore, creation of steep beach areas, and alteration of current flows and wave actions.
- (c) Filling of wetlands has serious effects due to complete destruction of an aquatic environment, loss of habitat for fish and wildlife, loss of water storage capacity, and loss of the natural storm runoff cleansing functions and the natural nutrient entrapment functions of wetlands.

(2) Standards

- (a) Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is prohibited.
- (b) Dredging for the purpose of removing accumulated silt, sand, or gravel behind an existing dock or within the confines of an existing structure may be permitted. Additionally, the finished elevation of the lakebed may not be lowered from its natural level.
- (c) Dredging for the purpose of removing accumulated silt, sand, or gravel which blocks access to a docking area may be permitted provided the area to be dredged is less than 500 square feet (500 ft²).
- (d) Dredging is permitted only when the lake is at low pool. In general, Flathead Lake and Lake Mary Ronan are at low pool from December through April of each year; Swan Lake is at low pool from August through mid-December of each year.
- (e) Dredged areas shall be stabilized with a protective armament as soon as possible after excavation.
- (f) Fill projects for the purpose of expanding existing land areas are prohibited.
- (g) Fill projects for the purpose of reclaiming property which has been

eroded away over a period of one (1) year or more shall not be permitted.

- (h) Filling of wetlands adjacent to a lake is prohibited.
- (i) Where large gravel, cobble or boulders have come out of a crib structure or a similar structure, the rock may be replaced in the structure provided that such rock can be picked from the lake bed free of fine materials and that a protective armament of rock remains on the lakebed in the area from which the rock is removed.
- (j) Filling for the purpose of creating an artificial beach on the lakebed is prohibited.
- (k) Dredging on Lake Mary Ronan is not recommended.

(H) Buoys

(1) Policy

Buoys present a potential hazard to navigation and recreation.

(2) Standards

- (a) Buoys and anchors may be permitted only if the governing body, after planning board review, finds that placement of the buoy will not create a significant safety hazard and will not interfere with navigation or recreation.
- (b) Buoys shall be “mooring buoys” as defined under the Uniform State Waterway Marking System. Additionally, the buoys shall have suitable lighting facilities to prevent safety hazards. Lighting systems are subject to approval of the governing body.
- (c) Mooring buoys shall be located so that a moored boat is held within the riparian boundaries of the subject property as it floats around the buoy anchor in all wind directions and the buoy anchor shall be located no further than seventy-five feet (75’) lakeward of the shoreline when the lake is at the mean annual high-water elevation. The distance may be extended up to one hundred feet (100’) if the landowner demonstrates 1) it is necessary to accommodate their boat, and 2) compliance with any other reviewing entities.
- (d) Buoys are prohibited on Lake Mary Ronan and Swan Lake.

(I) Living Quarters

(1) Policy

Living quarters represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relative short periods of time for recreational purposes. Living quarters are potentially harmful to the lake and lakeshore due to intrusion of a non-aquatic land use into an aquatic environment, creation of impervious surfaces, increase in surface storm runoff into the lake, concentration of human activities on the lakeshore protection zone, obstruction of scenic views, and probable sewer line leakage.

(2) Standards

- (a) No permanent or temporary living quarters shall be constructed waterward of the mean annual high-water elevation or within the

lakeshore protection zone.

- (b) Existing living quarters situated in the lakeshore protection zone may be remodeled and maintained, provided that the building is not expanded in size, shape, or character.
- (c) Construction materials shall be of a non-reflective nature and finished colors shall be chosen to blend with the background landscape.
- (d) Existing living quarters to include attached decks shall not be expanded in size, shape, or character, within the lakeshore protection zone.
- (e) No new living quarters, temporary or permanent, including attached decks shall be permitted within the lakeshore protection zone.

(J) Burning and Vegetation Removal

(1) Policy

Burning of slash, construction debris, and removal of vegetation the lakeshore protection zone may have tremendous impacts on water quality by increasing turbidity and nutrient loads in the lake.

(2) Standards

- (a) Burning within the lakeshore protection zone is prohibited except in extreme cases where downed material cannot be removed by any other means. These instances shall be reviewed on a case-by-case basis
- (b) Removal of native vegetation shall be a part of a total landscaping plan for a property and shall be reviewed on a case-by-case basis.
- (a) Small “campfires” are permitted (three-foot by three-foot (3’ X 3’) or less.

(K) Roads

(1) Policy

Driving surfaces represent a concentration of human activities within an aquatic environment. In addition to modification of existing surface drainage patterns, roads accumulate oils, fuels, and other chemicals. These materials severely degrade water quality when washed into a lake.

(2) Standards

- (a) All road surfaces within the lakeshore protection zone shall be included in the calculation of “Total Constructed Impervious Surface Area” allotted to each property.
- (b) All paved, concrete, or asphalt roads shall incorporate a drainage management and filtration system designed to remove sediments, oils, and other chemicals from the runoff prior to discharge into the lake.
- (c) No road, paved or otherwise, shall be extended to within twenty feet (20’) of the mean annual high-water elevation, except as necessary to provide access to a boat ramp.
- (d) Road widths shall be limited to twelve feet (12’).

(L) Delivery Systems

(1) Policy

Fuel delivery systems provide a necessary service to the boating public, however, fuel spills into the lake seriously degrade water quality and may destroy habitat for fish and wildlife.

(2) Standards

- (a) Fuel storage tanks shall not be placed over the lake or within the lakeshore protection zone.
- (b) Fuel pumps should be located outside the lakeshore protection zone.
- (c) Fuel delivery lines shall be sealed in schedule 80 P.V.C. or a suitable metal pipe to contain any potential leaks.
- (d) A fuel spill locker containing absorbent pads and spill containment booms shall be kept near the delivery point to clean up and contain potential spills.
- (e) Fuel stations should be located in private or public marinas or public recreation sites.

(M) Utilities (Water, Sewer, Gas and Electrical Lines; Lighting and Wells)

(1) Policy

The improper placement and maintenance of utility lines, lighting and wells can have significant effects on lakes due to disturbance of the lakebed or lakeshore.

(2) Standards (Utility Line Burial)

- (a) All gas, water and electrical lines within the lakeshore protection zone shall be buried and located between the mean annual high and low water elevations.
- (b) That portion of the gas, water or electrical line which is not buried and lies exposed on the bottom of the lakeshore shall be weighted to prevent floatation or snagging.
- (c) Only the minimum amount of material necessary to lay the line shall be removed from the trench.
- (d) In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
- (e) In areas where no rock layer exists, the replaced dirt shall be compacted and consolidated in order to prevent erosion. Additional cover, such as gravel, a rock layer or vegetation may also be required.
- (f) Following installation, the lakebed or lakeshore shall be returned to its original condition.
- (g) A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake.
- (h) At no time shall the wheels or tracks of any vehicle come in contact with the lake.

(3) Waterlines

(a) Policy

Deep wells located outside the lakeshore protection zone are the preferred water source. If a deep well is not feasible, direct lake water may be used.

(b) Standards

- (i) A water line shall be located no closer than fifteen feet (15') from either side of the property/riparian line.
- (ii) Waterlines using submersible pumps may incorporate an electrical line. All such work and installation shall be done in accordance with the State Uniform Plumbing and Electrical Codes.
- (iii) No waterline shall lie on top of or be attached to a floating dock or raft.
- (iv) All waterlines shall be covered or buried for safety and aesthetic purposes unless placement is temporary in nature (less than thirty (30) days).

(4) Sewer lines/Disposal facilities

(a) Standards

- (i) Domestic sewer lines or components are prohibited in the lakeshore protection zone.
- (ii) Municipal/community sewer lines, lift stations and other associated facilities are prohibited in the lakeshore protection zone.
- (iii) Shoreside pump-out facilities may be placed in public or private marinas or public parks.
- (iv) Shoreside pump-out facilities must receive approval of the Montana Department of Health and Environmental Sciences and the Lake County Health Department.
- (v) Shoreside pump-out facilities shall include equipment to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system located outside the lakeshore protection zone.

(5) Gas and Electrical Lines

(a) Policy

Overhead electrical lines are unsightly, potentially dangerous in or near a water environment and generally in conflict with the natural setting of the lakeshore protection zone.

(b) Standards

- (i) No permanent overhead electrical lines are allowed in the lakeshore protection zone.
- (ii) All gas lines shall be buried.

(6) Lighting

(a) Policy

Unrestricted lighting in the lakeshore protection zone can be distracting, hazardous to navigation and contributory to an unnatural setting.

(b) Standards

All lighting shall be designed to reflect light away from abutting or adjacent properties and the lakeshore protection zone.

(7) Wells

(a) Standards

- (i) No well shall be drilled or developed in the lakeshore protection zone.
- (ii) For wells located outside of the lakeshore protection zone, when originally developing and pumping the well, the silt-laden water shall not be allowed to flow directly into the lakeshore protection zone.

(N) Heat Exchange Systems

(1) Policy

- (a) Heat exchange systems have the potential to cause navigation hazards and pollution in the lake.
- (b) Heat exchange systems are more appropriately located outside of the lakeshore protection zone.

(2) Standards

No heat exchange system shall be located within the lakeshore protection zone.

(O) Fencing, Stairways, Satellite Antennas, Sun Decks and Walkways

(1) Policy

- (a) Fences or hedges within the lakeshore protection zone restrict the free movement of people and may detract from the aesthetic value of the lakeshore.
- (b) Fences or hedges may be permitted within the lakeshore protection zone provided that they do not restrict the visibility of the neighboring properties or extend waterward of the mean annual high-water elevation.
- (c) Decks, walkways, and stairways are all structures which are located landward of the mean annual high-water elevation and are considered constructed surfaces. These structures extend human activity into the lakeshore protection zone, focus and concentrate such activity, and provide access to the lakeshore.
- (d) If properly placed and constructed so as to minimize visual impact from adjoining properties and the lake, decks, walkways and stairways typically have minimal impact on the lakeshore and, in some cases, help to protect the fragile lakeshore from foot traffic.
- (e) Proper placement and construction are typically accomplished by flush or ground mounting of all decks, stairways and walkways in conjunction with wise use of the topography and landscaping. Elevated or projecting structures are typically prohibited. In addition, the cantilevering of decks and stairways to create level areas on otherwise steeply sloping, hilly or rocky properties is also typically prohibited.

(2) Standards

- (a) No fence shall exceed six feet (6') in height within the lakeshore protection zone.
- (b) All fences must maintain at least fifty percent (50%) open space in their design. Solid fences are prohibited.
- (c) Barbed-wire fencing is prohibited.
- (d) Fences shall not extend waterward of the mean annual high-water elevation.
- (e) All decks shall be ground mounted. No portion of a deck shall extend beyond the mean annual high-water elevation, nor shall the deck extend more than two feet (2') above the adjacent ground level.
- (f) Stairways shall follow the natural grade of the existing lakeshore and should be designed and sized to provide access only (that is, the stairway should be no wider than four feet (4')). Typically, the stairway will be mounted flush or within a few inches of the adjacent or underlying lakeshore. In no case would a stairway-walking surface be situated higher than two feet (2') above the adjacent or immediately underlying ground. Should the lakeshore prove to be too steep to adequately follow this standard, the applicants shall discuss alternative methods of accessing the lakeshore or consider the lakeshore inaccessible rather than excavating, filling or modifying the lakeshore protection zone so as to meet the standard.
- (g) Walkways shall be constructed on the existing terrain. The placement of individual stones, gravel or imbedded wood are recommended travel surfaces. Concrete is not.
- (h) Satellite antennas create a visual impact which is discordant with the background of the lakeshore. Location of satellite antennas within the lakeshore protection zone is prohibited.

(P) Marina Standards (Public/Private)

(1) Policy

- (a) Marinas, because of their size, have a high potential to impact the lake and lakeshore. A marina should be designed to accommodate only its anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to ensure general compatibility with the character of the area so as not to create an unwarranted disturbance or nuisance and to protect the quality of the water, fish and wildlife habitat.
- (b) A distinction should be made between public or commercial marinas providing services to the general public and meeting the needs of a homeowners' association or other limited group.

(2) Standards

- (a) A minimum of one hundred feet (100') shall remain open between any dock structure and the side riparian boundary.
- (b) Minimum twenty-five-foot (25') travel lanes shall be provided between dock structures for boats to travel.
- (c) For private marinas, the following standards apply:

- (i) Each marina shall have a minimum of two hundred fifty feet (250') of lake frontage;
 - (ii) The design standards for dockage shall be limited by and must comply with Section 4-3(A) unless otherwise modified below;
 - (iii) The maximum length of each individual wing dock forming a boat slip shall not exceed twenty feet (20');
 - (iv) The overall density of boats/boat slips provided shall not exceed one boat/boat slip per twenty linear feet (20') of lakeshore frontage;
 - (v) Private marinas may incorporate a boat ramp;
 - (vi) No retail sales or rental facilities shall be allowed on the site.
- (d) For commercial/public marinas, the following standards apply:
- (i) Each marina shall have a minimum of three hundred feet (300') of lake frontage;
 - (ii) In addition to Section 5-3(A) design standards for docks, the maximum length of that portion of any dock extending over water shall be one hundred feet (100');
 - (iii) The length of the wing docks forming the individual boat slips shall be sized according to need;
 - (iv) The amount of impervious (constructed) surface in the lakeshore protection zone per property shall not exceed ten square feet (10 ft²) for each linear foot of lakeshore frontage;
 - (v) The amount of impervious (constructed) surface located over the lake shall not exceed twelve square feet (12 ft²) for each linear foot of lakeshore frontage;
 - (vi) The overall density of boats or boat slips provided shall not exceed one boat or boat slip per ten linear feet (10') of lakeshore frontage;
 - (vii) One boat ramp per commercial marina may be constructed;
 - (viii) One shore side sewage facility and one shore side fuel station per marina may be constructed;
 - (ix) Lake related rental services and retail sales of water-use related merchandise such as boat fuel, oil and lubricants, fishing equipment and personal items are typically associated with the marina; and
 - (x) Boats traveling within an area extending from the mean annual high-water elevation to a minimum of one hundred feet (100') waterward of the end of a dock shall maintain a slow speed so that the boat produces no wake. Such distance from the dock's end shall be identified by buoys placed in the lake. The reduction to no wake is produced by the boat. Such distance from the dock's end shall be identified by buoys placed in the lake. The reduction to no wake speed may be required at a distance greater than one hundred feet (100') depending upon the size of the marina and the size of the boats to be berthed.

(Q) Other projects

Other types of projects which are not specifically covered by the foregoing design standards shall be reviewed on an individual basis under the “Policy Criteria for Issuance of a Permit” contained in Section 5-1 and the “General Construction Requirements” contained in Section 5-2 of these regulations.

5-4 Nonconforming Uses

- (A) Any nonconforming building or structure in existence prior to the effective date of the "Lake County Lakeshore Protection Regulations" may be continued and maintained, provided there are no physical changes to the structure other than necessary maintenance and repair.
- (B) An existing nonconforming building or structure may continue to be used following a change in ownership or management, provided there is no change in the nature or character of such nonconforming use.
- (C) A nonconforming building or structure having been damaged or partially destroyed by fire, flood, windstorm, hail, aircraft damage, riot, vandalism, explosion or smoke to an extent not exceeding fifty percent (50%) of its real value, exclusive of foundations, at any time, may be restored to its immediately previous use existing at the time of partial destruction. Whenever a nonconforming building or structure is damaged in excess of fifty percent (50%), as stated above, the repair or reconstruction shall conform to the requirements of the "Lake County Lakeshore Protection Regulations".
- (D) A building or structure which is nonconforming shall not be added to or enlarged in any manner unless such building or structure, including such addition and enlargements, is made to conform to the requirements of these regulations.
- (E) Any nonconforming use or structure which is eliminated or reduced in size or scale by a means other than natural disaster or calamity can only be replaced, reestablished or enlarged according to these regulations.
- (F) Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained in accordance with the requirements of these regulations.